

**Iowa Board of Medicine
CLOSED SESSION - MODEL MOTIONS
September 2012**

To move the Board meeting into closed session, one of the following motions is needed:

DISCIPLINARY CASES

1) Review Investigation (accept or reject case):

I move that the Board meet in closed session for the purpose of discussing whether to initiate licensee disciplinary investigation or proceedings, pursuant to **Iowa Code section 21.5(1)(d)**;

2) Consider Proposed Decision:

I move that the Board meet in closed session for the purpose of discussing the decision to be rendered in a contested case, pursuant to **Iowa Code section 21.5(1)(f)**.

3) Combined reasons/citations for a closed session:

I move that the Board meet in closed session for the purposes of discussing whether to initiate licensee disciplinary proceedings and discussing the decision to be rendered in a contested case, pursuant to **Iowa Code sections 21.5(1)(d) and 21.5(1)(f)**.

LITIGATION

I move that the Board go into closed session for the purpose of discussing strategy with counsel in matters that are presently in litigation or where litigation is imminent, pursuant to **Iowa Code section 21.5(1)(c)**.

After the motion and second, a roll call vote must be taken. A session may close only on affirmative vote of 2/3 members or of all members present.

CLOSED SESSIONS OF BOARD MEETINGS

This information was prepared by Julie F. Pottorff, Deputy Attorney General, Iowa Department of Justice, August 15, 2011.

GROUND FOR CLOSED SESSION

A. Grounds - available only to extent necessary for any of the following reasons:

1. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds. Iowa Code § 21.5(1)(a) (2011).
2. To discuss application for letters patent. Iowa Code § 21.5(1)(b) (2011).
3. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation. Iowa Code § 21.5(1)(c) (2011).

Attorney Client Privilege - Attorney client privilege applies in certain situations to protect communications between public agencies or public officials and their lawyers; however, privilege does not extend to all communications between agencies or officials and government attorneys. Application of the privilege must be determined on a case-by-case basis. *Tausz v. Clarion-Goldfield Community School Dist.*, 569 N.W.2d 125 (Iowa 1997).

4. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigation or proceedings if the governmental body is a licensing or examining board. Iowa Code § 21.5(1)(d) (2011).
 5. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor. Iowa Code § 21.5(1)(e) (2011).
 6. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A. Iowa Code § 21.5(1)(f) (2011).
- Municipal Civil Rights Commissions - Where Iowa Code section 216.19 requires cities to “maintain an independent local civil rights agency or commission

consistent with commission rules adopted pursuant to chapter 17A” and local civil rights commissions cooperate with the Iowa Civil Rights Commission in the investigation and prosecution of civil rights actions so that these commissions largely pattern their procedures after the state commission and chapter 17A, the local proceeding amounts to “a contested case conducted according to the provisions of chapter 17A” and may close to deliberate under Iowa Code section 21.5(1)(f). *Botsko v. Davenport Civil Rights Com'n*, 774 N.W.2d 841 (Iowa 2009)

7. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection. Iowa Code § 21.5(1)(g) (2011).

8. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law. Iowa Code § 21.5(1)(h) (2011).

9. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session. Iowa Code § 21.5(1)(i) (2011).

10. To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the audio recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed. Iowa Code § 21.5(1)(j) (2011), as amended by, Senate File 289, 84th G.A., 1st Sess., § 5 (Iowa 2011).

11. To discuss information contained in records in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50. Iowa Code § 21.5(1)(k) (2011).

12. To discuss patient care quality and process improvement initiatives in a meeting of a public hospital or to discuss marketing and pricing strategies or similar proprietary information in a meeting of a public hospital, where public disclosure of such information would harm such a hospital's competitive position when no public purpose would be served by public disclosure. The minutes and the

audio recording of a closed session under this paragraph shall be available for public inspection when the public disclosure would no longer harm the hospital's competitive position. For purposes of this paragraph, "public hospital" means the same as defined in section 249J.3. This paragraph does not apply to the information required to be disclosed pursuant to section 347.13, subsection 11, or to any discussions relating to terms or conditions of employment, including but not limited to compensation of an officer or employee or group of officers or employees. Iowa Code § 21.5(1)(1) (2011).

PROCEDURE FOR CLOSED SESSION

A closed session must comply with following statutory procedures:

1. A session may close only on affirmative vote of 2/3 members or of all members present. Iowa Code § 21.5(1) (2011).
2. The vote of each member on the question of holding the closed session must be announced publicly and entered in the minutes. Iowa Code § 21.5(2) (2011).
3. The reason for holding the closed session must be announced publicly and entered in the minutes. Iowa Code § 21.5(2) (2011).
4. Any business discussed during a closed session must relate directly to the specific reason announced as justification to close the session. Iowa Code § 21.5(2) (2011).
5. Final action on any matter discussed during a closed session must be taken in open session unless a specific provision of the Code expressly permits final action in closed session. Iowa Code § 21.5(3) (2011).
6. Detailed minutes must be kept on the following:
 - a. all discussion;
 - b. persons present; and
 - c. action occurring. Iowa Code § 21.5(4) (2011).
7. Closed sessions must be recorded. Iowa Code § 21.5(4) (2011).
8. Minutes and audio recording must be sealed and retained for at least one year, except as otherwise required by law. Iowa Code § 21.5(4) (2011), as amended by, Senate File 289, 84th G.A., 1st Sess., § 6 (Iowa 2011)